FILE COPY

Office - Supreme Court, U
FILED
APR 26 1949
CHARLES ELMORE CROPL
CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 672

MARKOS VLAVIANOS, ET AL.,
Petitioners,

VS.

S.S. CYPRESS
and
THE MARYLAND DRYDOCK COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID R. OWEN,
10 Light St., (25th Floor),
Baltimore 2, Md.,
Attorney for Respondent,
The Maryland Drydock Co.

The Daily Record Co., Baltimore 3, Md.

INDEX

	Page
The Opinions Below	1
Statement of the Facts	1
This Court Should Not Exercise It's Jurisdiction Under 28 U. S. C. A. Sec. 1254	6
Argument	7
I. No wages are due to the Petitioners under their written contracts	7
II. The Petitioners are not entitled to one month's wages at the contract rate under 46 U. S. C. A. Sec. 594	8
III. The Petitioners are not entitled to a maritime lien for services allegedly rendered after the vessel was arrested	9
IV. Petitioner Vlavianos, the Master, is not entitled to a lien for his wages	9
V. Petitioner Georigou is not entitled to a lien for advances to a passenger	10
Conclusion	10

Table of Cases Cited

Barfield v. Standard Oil Co., (1939) A. M. C. 1247 (N. Y. Mun. Ct. 1939)	8
Collie v. Fergusson, 281 U. S. 52 (1930)	9
Cutter v. Powell, (1795) 6 T. R. 320 (K. B.)	7
Eaken v. Thom, (1803) 5 Esp. 6 (K. B.)	7
Hulle v. Heightman, (1802) 2 East. 145 (K. B.)	7
N. Y. Drydock Company v. The Poznan, 274 U. S. 117 (1927)	6

	PAGE
Piedmont Coal Co. v. Seaboard Fisheries Co., 254 U. S. 1 (1920)	10
Stark v. Mueller, 22 Fed. 447 (N. D. Ill. 1884)	7
Steamboat Orleans v. Phoebus, 11 Pet. 175 (1837)	9
The Aguia, 72 F. Supp. 201 (E. D. S. C. 1947)	9
The Helen Fairlamb, 251 Fed. 412 (E. D. Pa. 1918)	7
The Steel Trader, 275 U. S. 388 (1928)	6
Thorson v. Peterson, 9 Fed. 517 (N. D. Ill. 1881) aff'd 14 Fed. 742 (C. C. N. D. Ill. 1883)	7

TABLE OF STATUTES CITED

28 U. S. C. A. Sec. 1254	6
46 U. S. C. A. Sec. 594	6, 8
46 U. S. C. A. Sec. 971	10

OTHER AUTHORITIES

1 Benedict on Admiralty, Sec. 80	9
MacLachlan on Merchant Shipping (London, 1932) p. 177	8
Supreme Court Rule 38(5)(b)	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 672

MARKOS VLAVIANOS, ET AL.,
Petitioners,

VS.

S.S. CYPRESS
and
THE MARYLAND DRYDOCK COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THE OPINIONS BELOW

The opinion of the District Court is unreported but appears at pages 88-96 of the Record. The opinion of the Court of Appeals is reported at 171 F. (2d) 435 and appears at pages 126-133 of the Record. *Both courts rejected all of the contentions advanced on behalf of the Petitioners.*

STATEMENT OF THE FACTS

The SS CYPRESS was an ex-United States Coast Guard lighthouse tender, only 190 feet long and of 677 gross tons. She was purchased from the U. S. Maritime Commission at Baltimore in March, 1947, by Compania Navagacion Dolega, S. A., a Panamanian corporation, of which Spyros G. An-

dreadis, a citizen of Greece, was the American representative. The corporation is the claimant in this proceeding.

Andreadis had the vessel documented under the flag of Panama and proceeded to outfit her for passenger-cargo service in the Mediterranean. In furtherance of this purpose he entered into a contract with The Maryland Drydock Company, intervening libellant and Respondent herein, for the repair and overhaul of the ship. On April 18, she was moved to The Maryland Drydock Company's plant at Fairfield, Maryland, where she was drydocked and the major repairs were accomplished. On April 26, still without a crew aboard, the vessel was moved back to the Drydock Company's "uptown" works at Pier 3, Pratt Street, in Baltimore. There the overhauling continued until June 20. The vessel remained at this berth until after September 11, when she was sold under the libel in this case. The Maryland Drydock Company's bill amounted to $12,872.00, which both the owner and the Master agreed was entirely fair. There is no dispute about the amount of the bill, or that it is due and owing, or that the Drydock Company's work was completely satisfactory.

On April 27 Andreadis commenced to place a crew aboard for the trans-Atlantic voyage. By May 25 these totalled fourteen officers and men, including the Master, Markos Vlavianos. They are the Petitioners (libellants) here. All were Greek citizens except for one naturalized citizen of the United States. Separate oral wage agreements were made by Andreadis with each man as he came aboard, providing for payment on a per day basis. This was apparently a temporary arrangement pending the vessel's departure and is referred to herein as the "port rate". On May 24 all those then aboard were paid up to date, including the day of payment, at the port rate. On June 7 all except the Cap-

tain signed individual contracts in the following form (translated from the original Greek), the Captain at the same time entering into a similar oral agreement with Andreadis:

> "The undersigned CAPTAIN MARKOS VLAVIANOS of the S/S "CYPRESS", representing the shipowner, and the Greek Seaman, CONST. LINARDOPOULOS agree to the following:
>
> 1. It is agreed with Const. Linardopoulos, Cook registered on the Panamanian S/S "Cypress", of which I am Captain, that on arrival of the Ship in Greece, I shall pay to him the agreed sum of Five million two hundred fifty thousand drachmas (5,250,000), in payment for the voyage from Baltimore, North America to Greece.
>
> 2. It is agreed that the advance which was given in America will be deducted from the above sum.
>
> 3. It is agreed, in the event the voyage takes over one month from the embarkation and not yet arrived in Greece, the above Seaman shall be paid according to the Panamanian pay-list.
>
> 4. It is agreed on arrival of the Ship in Greece, the final payment of the above sum shall be made within (4) Four days. It is also agreed that after four days have passed, Article (3) Three shall start in force.
>
> 5. It is agreed, in the event of sickness, accident, or shipwreck, the usual Greek decrees shall be in force. It is also agreed that expenses for subsistence to any of the above events shall be (20,000) Twenty thousand drachmas per day.
>
> This is in effect from the day of its signing at Baltimore, June 7, 1947."

The pay scale provided for in these written contracts is referred to herein as the "contract rate". The amounts thereof, together with the port rate, are as follows:

Name	*Rating*	*Port Rate Per Day*	*Contract Rate for Voyage in Drachmas*	*Equivalent in Dollars as Claimed By Petitioners*
Markos Vlavianos	Capt.	$16	8,400,000	$1,680
Gregorios Mpeis	Ch. Off.	12	6,300,000	1,260
Demetrios Trikogolu	Ch. Eng.	14	7,700,000	1,540
Ionnis Georgiou	2d Eng.	12	7,700,000	1,540
Dimitrios Merkouvris	3d Eng.	12	7,700,000	1,540
Georgios Kalogridis	Fireman	7	3,850,000	770
Georgios Vamvakaris	Fireman	7	3,850,000	770
Andreas Moschos	Fireman	7	3,850,000	770
Evangelos Poutous	Seaman	7	3,500,000	700
Michalis Rankgavis	Seaman	7	3,500,000	700
Evangelos Xagoraris	Seaman	7	3,500,000	700
Polidorus Patrikis	Seaman	7	3,500,000	700
K. Linardopoulos	Cook	10	4,900,000	1,050
P. Alexandratos	Steward	10	4,200,000	840

On May 29 and June 6, Andreadis made substantial advances to the officers and crew on account of future wages. He had also been advancing large sums to Captain Vlavianos for supplies, and Vlavianos knew that he was low on funds. In fact the Captain had made efforts to secure a loan for the owner in order that the vessel's debts might be paid. However, on June 27, having run out of money, Andreadis called Vlavianos on the telephone from New York and informed him that the vessel could not sail and that he should pay off at the port rate any of the crew who wanted to leave the ship. On June 28, Vlavianos conveyed this information to the crew but ordered them to remain on board in the expectation that Andreadis would raise some money and the ship would sail. They took the position, however, that they were entitled to be paid at the contract rate for the twenty-one days which had elapsed since Articles were signed, and on July 2, they filed a libel *in rem* and the vessel was arrested. As finally amended the crew's claim for wages alleged to be due at the port rate from May 25 to June 7 and at the contract rate from

June 7 to June 28, together with damages for discharge, amounts to $18,572.59.

After the ship was taken into custody no steps were taken to evict the Petitioners. They were allowed to remain aboard but performed no further ship's work (R. 117). The Maryland Drydock Company provided all necessary custodian and maintenance services at no charge to the vessel or to the Marshal (R. 107-123). On August 5 a hearing was held before Judge Chesnut on the libellants' petition for the sale of the vessel. At that time he rather severely criticized the eleven officers and men who were still on board for not having sought other employment. Nevertheless, they proceeded to file an intervening libel which, as amended, claimed the additional sum of $5,334.54 for wages alleged to be due at the port rate from June 28 to August 5. The total amount of their claims is, therefore, $23,907.13.

All the while Andreadis was making every effort to raise sufficient funds either to pay off his debts or to bond the vessel. At the hearing on August 5 he reported to District Judge Chesnut that he had been entirely unsuccessful in this endeavor but had not yet given up hope. Nevertheless, on September 11, it having appeared that Andreadis was for all practical purposes insolvent, the vessel was sold at auction and the net proceeds of $17,837.56 were deposited in the Registry of the Court.

Prior and subsequent to the sale depositions were taken, and intervening libels were filed by several repairmen and ship chandlers in the total amount of $17,460.08. The claims of these parties are not contested on this appeal. On January 8 and again on January 29, 1948, District Judge Coleman considered the written testimony and exhibits and heard arguments of counsel. On March 17 he

signed a decree incorporating substantially all of the contentions advanced on behalf of The Maryland Drydock Company and allowing the seamen $1,750.65 for wages at the port rate from May 25 to June 28, after making allowance for wages already advanced to them. Because of the relative size of its claim ($12,872.00) The Maryland Drydock Company had in effect assumed the position of Respondent in the case.

On appeal to the Court of Appeals for the Fourth Circuit the District Court's decree was affirmed in all respects except one. In that respect it was modified so as to give the crew one month's wages at the port rate for wrongful dischange under 46 U. S. C. A. Sec. 594, amounting to an additional $3,600.00.

THIS COURT SHOULD NOT EXERCISE ITS JURISDICTION UNDER 28 U.S.C.A. SEC. 1254

The Petitioners seek a review of the decision of the Court of Appeals solely on the ground that it "has decided a federal question in a way probably in conflict with applicable decisions of this court" (S. Ct. Rule 38 (5) (b)). *However, it is most significant that nowhere does their brief refer to such decisions or point out the alleged conflict.* In fact only two Supreme Court decisions are cited: *The Steel Trader,* 275 U. S. 388 (1928), for a general principle which is undisputed and which the Court of Appeals recognized and applied, and *N. Y. Drydock Company* v. *The Poznan,* 274 U. S. 117 (1927), which does not even involve the facts or the legal principle for which it is cited. On the contrary the decision below is entirely consistent with such law on the subject as has been established by this Court, the lower federal courts, and in England. These decisions will be cited in the next subdivision of this brief.

The fact of the matter is that the shipping articles here involved are an anachronism. For many years it has been customary for seamen to sign on for a voyage but to be paid *by the month*. They do not receive a lump sum for the voyage, as here. This is believed to be a nearly universal practice, particularly on American ships. Consequently, the decisions construing such articles are few and are old, and it can fairly be said that *this case involves no question of importance in federal law.*

ARGUMENT

I.

NO WAGES ARE DUE TO THE PETITIONERS UNDER THEIR WRITTEN CONTRACTS.

This case involves no question of priority of claims. To the extent that the Petitioners (except the Captain) can prove their claim for wages, they are entitled to a preferred maritime lien therefor. However, no wages ever accrued under the written contracts because the ship never made the voyage, which was a condition precedent to liability for wages at the extremely high contract rate, which contemplated sea duty.

> *Cutter* v. *Powell,* (1795) 6 T. R. 320 (K. B.);
> *Hulle* v. *Heightman,* (1802) 2 East. 145 (K. B.);
> *Eaken* v. *Thom.,* (1803) 5 Esp. 6 (K. B.);
> *Thorson* v. *Peterson,* 9 Fed 517 (N. D. Ill. 1881), aff'd 14 Fed. 742 (C. C. N. D. Ill. 1883);
> *Stark* v. *Mueller,* 22 Fed. 447 (N. D. Ill. 1884);
> *The Helen Fairlamb,* 251 Fed. 412 (E. D. Pa. 1918) ("When the pay is for the run or for the voyage, generally speaking, nothing is earned unless the voyage is completed.")

These authorities show that the contracts were entireties and could not be divided into several claims for each day's work from June 7 (when the contracts were signed) to

June 28 (when the crew were discharged), as claimed by the Petitioners. See *Barfield* v. *Standard Oil Co.*, (1939) A. M. C. 1247 (N. Y. Mun. Ct. 1939). However, both the District Court and the Court of Appeals decreed that the Petitioners should be paid for this period at the *port* rate, which was based on a daily wage. In view of the fact that the nature of their duties was the same during their entire service on board, it seems completely equitable to pay them at the same rate throughout and to give them a preferred lien therefor. This was done.

II.

THE PETITIONERS ARE NOT ENTITLED TO ONE MONTH'S WAGES AT THE CONTRACT RATE UNDER 46 U.S.C.A. SEC. 594.

The District Court found that, since the crew were hired at a flat rate to make a voyage of indeterminate length, their wages for one month could not be computed at the contract rate. It concluded that the statute was not intended to apply to articles specifying wages by the voyage as distinguished from wages by the month. The parent English statute has been similarly interpreted. *Maclachlan on Merchant Shipping*, (London, 1932) p. 177.

The Court of Appeals, however, although agreeing that the contract rate was inapplicable, held that the statute should be applied and the "one month's wages" should be computed at the port rate, which accrued on a daily basis. As the result of this modification the Petitioners' award was increased by $3,600.00. Had their demand been met for both the contractual and statutory compensation at the higher rate, the entire fund would have been wiped out.

Consequently this Respondent feels that the Petitioners were even more generously treated by the Court below than they deserved.

III.

THE PETITIONERS ARE NOT ENTITLED TO A MARITIME LIEN FOR SERVICES ALLEGEDLY RENDERED AFTER THE VESSEL WAS ARRESTED.

The crew were not employed by the Marshal after the seizure and rendered no services whatsoever to the vessel during this period. As a matter of fact all necessary protection services were furnished free by the Respondent Maryland Drydock Company (R. 103-123). Events subsequent to the seizure of a ship and while she is in *custodia legis* do not give rise to a maritime lien. *Collie* v. *Fergusson*, 281 U. S. 52 (1930).

IV.

PETITIONER VLAVIANOS, THE MASTER, IS NOT ENTITLED TO A LIEN FOR HIS WAGES.

Vlavianos was hired as master, signed the articles as master, and the manifest showed him as master. In fact no mention was made that he might also be radio operator until some time after the libel was filed and it became evident that he had no lien. Learning of this legal defect, the Petitioner amended his libel to allege that he was actually radio operator. However, he performed no real services in this capacity (if indeed he ever had it), and his pay was provided for in a lump sum as master. He is therefore entitled to no lien for his wages.

Steamboat Orleans v. *Phoebus*, 11 Pet. 175 (1837);

The Aguia, 72 F. Supp. 201 (E. D. S. C. 1947);

1 Benedict on Admiralty, Sec 80.

In the cases cited by the Petitioner the libellant for one reason or another was listed as "Captain" but his chief duties in each case were as a seaman, which entitled him to a lien.

V.

PETITIONER GEORGIOU IS NOT ENTITLED TO A LIEN FOR ADVANCES TO A PASSENGER.

This claim does not satisfy the requirements of 46 U. S. C. A. Sec. 971 in that the advance was not a "necessary", nor was it made to the vessel. *Piedmont Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1 (1920).

CONCLUSION

The Petitioners' contentions have been unanimously rejected by four judges in two courts (R. 88-96; 126-133). No reason has been shown why this Court should now take jurisdiction of the cause, since it does not involve any important question of federal law, nor does the decision below conflict with prior decisions of this or any other Court.

The Petition for Certiorari should be denied.

Respectfully submitted,

DAVID R. OWEN,

10 Light St., (25th Floor),
Baltimore 2, Md.,

Attorney for Respondent,
The Maryland Drydock Co.